



RECORDATION No.

15018

AUG 4 1986 -2 53 PM

ICC OFFICE OF  
THE SECRETARY  
OPERATING UNIT

STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
ALBANY, N.Y. 12232  
Telephone: (518) 457-2411

FRANKLIN E. WHITE  
COMMISSIONER

July 31, 1986

Office of Secretary  
Application and Fees Unit  
Room B-207  
Interstate Commerce Commission  
12th and Constitution Avenue, N.E.  
Washington, DC 20423

Re: Recording Evidence of Agreement  
49 USC §11303, #D001343  
dated December 28, 1983

Dear Madam:

I have enclosed the following true copies of original documents described below, which have been certified to be complete and identical in all respects to the original document under 49 C.F.R. 1177.3(b), to be recorded pursuant to Section 11303 of Title 49 of the U. S. Code.

This document is an Agreement, a secondary document identified as Agreement No. D001343 and dated December 28, 1983 between the New York State Department of Transportation (NYSDOT), the Delaware and Hudson Railway Company (D&H) and Guilford Transportation Industries, Inc. (GTI). This is a master agreement between the parties which takes into account the acquisition of the D&H by GTI and includes a capital projects agreement (Exhibit A-D001343) under which NYSDOT provides \$21,000,000.00 for track work and a subsidy agreement (Exhibit B - D000364) which provides \$3,000,000.00 for current operations.

It is an assumption of several primary agreements by GTI which were executed previously between NYSDOT and the D&H. Under the terms of this secondary agreement GTI assumes the responsibility of performance of those primary agreements and as a result thereof GTI and D&H become jointly and severally liable that D&H will perform the duties under said primary agreements. The heretofore referred primary agreements, fourteen (14) in number, are referred in this secondary agreement in Exhibit "C" (Agreements D094102, D094415 and D094729) and Exhibit "F" (Agreements D094102, D094415, D094729, D094144, D094801, D140368, D210090, D210148, D094578, D000226 and D089516) all of which are incorporated herein by reference in paragraph "SEVENTH".

The filing of this document does not constitute a waiver of any rights New York may have under the contract or pursuant to any law.

The names and the addresses of the parties to the documents are as follows:

Title holder to equipment:  
New York State Department of Transportation  
Legal Services Bureau  
Building 5, Room 509  
State Campus  
Albany, New York 12232

Service provider and user of equipment:  
Delaware and Hudson Railway Co.  
5th Street  
Watervliet, NY 12189

A description of the rolling stock and equipment covered by the document follows:

As previously indicated GTI has, by this agreement specifically assumed the obligations and agreed to be bound by the various agreements incorporated by reference.

This includes the recognition of the acquisition and retention of title by NYSDOT to the rolling stock and equipment which is the subject of these primary agreements. Copies of these agreements are being filed concurrently with the Interstate Commerce Commission and have not yet received recording index numbers. They are Agreements:

D94144	D140368
D94578	D210148
D94801	

The filing fee has been waived pursuant to 49 C.F.R. 1002.2(e)(1) because the New York State Department of Transportation is a State governmental entity.

Please return the extra certified true copies not needed by the Commission for recordation to:

Leona Jochnowitz or William J. Dwyer, Esqs.  
Legal Services Bureau  
New York State Department of Transportation  
Building 5, Room 509  
State Campus  
Albany, New York 12232

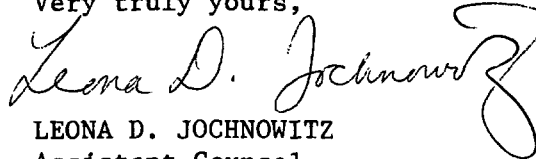
A short summary of the document to appear in the index follows:

This is a secondary document and represents an Agreement between the security and/or title holder, NYSDOT, the service provider, the D&H and GTI. Under this secondary document, GTI has assumed those agreements and incorporated them into this agreement by reference (see paragraph "SEVENTH"). GTI has specifically assumed the responsibilities for the performance promised by the D&H in those primary agreements and as a result thereof GTI and D&H become jointly and severably liable for D&H's performance under said primary

agreements. GTI assumes these obligations and recognizes NYSDOT's various equitable and legal interests in exchange for a capital projects agreement calling for a \$20,900,000.00 payment by NYSDOT and a \$3,000,000.00 subsidy agreement to maintain interim service on the D&H.

The filing of this document does not constitute a waiver of any rights New York State may have under the Agreement or pursuant to law.

Very truly yours,

A handwritten signature in cursive script, reading "Leona D. Jochnowitz". The signature is written in dark ink and is positioned above the printed name and title.

LEONA D. JOCHNOWITZ  
Assistant Counsel  
Legal Services Bureau

cc: Kathleen King, Esq.  
Office of Secretary

Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Catherine Kuzsman  
State of New York  
Department of Transportation  
Albany, NY. 12232

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8-4-86 at 2:53PM, and assigned re-recording number(s). 15018, A, B, C & D

Sincerely yours,

*Norata R. McGee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

**INTERSTATE COMMERCE COMMISSION**

STATE OF NEW YORK)  
COUNTY OF ALBANY ) ss.:

Catherine Kuzsman being duly sworn, deposes and says:

1. That your deponent is a Senior Rail Transportation Specialist with the Rail Division of the New York State Department of Transportation.
2. That among her duties she is involved with the capital construction projects with the Delaware and Hudson Railway Company and Guilford Transportation Industries and its subsidiaries.
3. That as such your deponent has access to the original executed agreements which have been entered into between the said Delaware and Hudson Railway Company, Guilford Transportation Industries, its subsidiaries and the New York State Department of Transportation.
4. That your deponent has read the original agreement identified as:

Agreement D001343, dated December 28, 1983  
between NYSDOT, D&H and GTI

and hereby certifies that the attached is a true, accurate and complete copy of the original agreement now on file in the offices of the New York State Department of Transportation.

Catherine Kuzsman  
Catherine Kuzsman

Sworn to before me  
this 1st day of Aug 1986.

William J. Dwyer  
Notary Public

**WILLIAM J. DWYER**  
Notary Public in the State of N. Y.  
Resident in and for Albany County  
Commission Expires March 30, 1927

WORK COPY



STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION

WILLIAM C. HENNESSY, COMMISSIONER

KC

(17)

MASTER  
AGREE 'T

AGREEMENT

D001343

AGREEMENT

AGREEMENT, made this 28<sup>th</sup> day of December, 1983, by and among the people of the State of New York, acting by and through the Commissioner of Transportation ("NYDOT"), Delaware and Hudson Railway Company ("D&H") and Guilford Transportation Industries, Inc. ("GTI"),

WITNESSETH:

WHEREAS, D&H has provided transportation services in the State of New York for the benefit of its citizens and industries for 160 years, and

WHEREAS, recent changes in the configuration of railroads in the area have led to financial difficulties for D&H, and

WHEREAS, NYDOT has actively supported D&H through capital investments; and

WHEREAS, restoration of D&H to viability is dependent upon the inclusion of D&H in a larger rail system in order to preserve D&H as an employer and a major carrier within the State of New York providing competitive Class I rail service to New York State industries and businesses, and,

WHEREAS, it is the desire of NYDOT that D&H become an integral part of just such a larger, stronger rail system, and

WHEREAS, NYDOT initiated discussions in 1981 to encourage GTI to acquire D&H in order to preserve rail service and competition in light of the financial problems being experienced by D&H, and

WHEREAS, GTI owns Maine Central Railroad Company and Boston and Maine Corporation and has been authorized to acquire D&H, and  
WHEREAS, GTI desires to extend its rail system by acquiring D&H, and

WHEREAS, GTI has made substantial progress in reducing financial obligations and long-term indebtedness of D&H by obtaining an agreement from the Federal government to subordinate the Federal debt and by negotiating with lessors and other creditors to defer certain current liabilities and has endeavored to improve the revenues and other cash available to D&H by contributing cash and by negotiating to obtain additional revenues, all in order to strengthen the financial position of D&H to encourage its long-term growth potential, and

WHEREAS, the parties hereto intend, by this Agreement, to resolve various issues and to provide capital and operating assistance as described herein and deemed necessary in connection with the acquisition of D&H by GTI;

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises, conditions, terms and obligations herein set forth and intending to be legally bound, hereby agree as follows:

1. Capital Projects. Prior to the acquisition of D&H by GTI, NYDOT shall have entered into an agreement, in the form attached hereto as Exhibit A, to provide approximately \$21 million for the capital projects referred to in Exhibit A and shall have secured all additional approvals necessary to implement such agreement.



2. Operating Subsidy. Prior to the acquisition of D&H by GTI, NYDOT shall have entered into an agreement, in the form attached hereto as Exhibit B, to provide up to \$ 3 million to D&H within the 9 month period following the date on which GTI acquires D&H in order to subsidize losses from operations in the State of New York and shall have secured, all additional approvals necessary to implement such agreement.

3. Maintenance. D&H represents that it has maintained the track specified in Exhibit C attached hereto at Federal Railroad Administration ("FRA") Class III standards. Based upon such representation, NYDOT hereby acknowledges that such maintenance constituted and continues to constitute an acceptable level of maintenance for such track under the capital project agreements between NYDOT and D&H referred to in Exhibit C. NYDOT and D&H hereby amend such agreements to provide that the maintenance standards for such track from and after the date on which GTI acquires D&H shall be FRA Class III, except where passenger trains between Schenectady and Rouses Point are now operating at higher speeds than permitted by FRA Class III standards in areas where the State has invested in track, signal and other rail improvements, at such locations the higher standard shall apply.

4. Special Provisions. The Special Provisions attached hereto as Exhibit D are part of this Agreement.

5. Consent to Indenture. GTI represents and warrants that the rights of NYDOT under prior capital project agreements between NYDOT and D&H and other rights of NYDOT in property owned

by New York State and used by D&H will not be affected by the Limitation Agreement among GTI, D&H and the United States attached hereto as Exhibit E or by the Indenture referred to therein. NYDOT acknowledges that the execution and delivery of the Indenture referred to in the Limitation Agreement will not constitute a default, breach or violation of any covenant under the capital project agreements listed in Exhibit F or the agreement attached hereto as Exhibit A and further NYDOT hereby consents to the execution and delivery by D&H of the indenture referred to in such Limitation Agreement. If and when requested by D&H, NYDOT will execute and deliver to D&H an appropriate instrument consenting to the incurrence of Qualified Senior Debt, as defined in such Limitation Agreement and indenture.

6. Representations and Warranties.

(a) By NYDOT: represents and warrants to GTI and D&H, as of the effective date of this Agreement and as of the date on which GTI acquires D&H, that

- (i) this Agreement is a valid and binding obligation of NYDOT and
- (ii) NYDOT has the power and authority, and that no further power and authority are required to be obtained under any law or regulation, to enter into this Agreement and

to fulfill its obligations hereunder.

(b) By GTI: GTI represents and warrants to NYDOT that

- (i) it has entered into an agreement with the Federal Government subordinating the Federal debt, and that
- (ii) GTI has made arrangements for the infusion into D&H from GTI of approximately \$6.8 million to take effect on or about the date GTI acquires D&H.

7. Complete Agreement. This Agreement, including Exhibits A thru F, and Appendix A, the required State contract clauses, constitutes the entire agreement among the parties and supersedes any prior understandings or agreements, whether written or oral.

8. Effective Date. This agreement shall take effect at the time at which it is approved by the State Comptroller and only if GTI acquires D&H.

IN WITNESS WHEREOF, the parties hereto have put their hands  
and seals on the day and year first above written.

WITNESS:

\_\_\_\_\_

PEOPLE OF THE STATE OF NEW YORK

By *J. K. Madigan*  
Commissioner of Transportation  
DEPT. OF TRANSPORTATION

ATTEST:

*C. T. Murray*

DELAWARE AND HUDSON RAILWAY COMPANY

By *[Signature]*

ATTEST:

\_\_\_\_\_

GUILFORD TRANSPORTATION  
INDUSTRIES, INC.

By *[Signature]*

Approved

\_\_\_\_\_  
Attorney General

Approved *(12/18)*

\_\_\_\_\_  
For the Comptroller  
Pursuant to Section 112  
State Finance Law

APPROVED AS TO FORM  
AND CONTENTS  
APPROVED AS TO LEGAL  
COUNSEL

DEC 29 1963  
MICHAEL J. MURRAY  
S. J. MURRAY

*[Signature]*

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ALBANY )

On this \_\_\_\_\_ day of December, 1983, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is \_\_\_\_\_ of DELAWARE AND HUDSON RAILWAY COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public  
State of New York

CHAPPELLE  
New York  
County

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ALBANY )

On this \_\_\_\_\_ day of December, 1983, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is \_\_\_\_\_ of GUILFORD TRANSPORTATION INDUSTRIES, INC., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public  
State of New York

CHAPPELLE  
New York  
County

THIS AGREEMENT made this            day of            , 1983,  
by and between the People of the State of New York (hereinafter  
referred to as "State") acting by and through the Commissioner  
of Transportation or his authorized representative, and the  
Department of Transportation (hereinafter referred to as  
"Commissioner" and "Department", respectively) and Delaware and  
Hudson Railway Company (hereinafter referred to as "Railroad"),  
a Delaware Corporation duly authorized to do business in the  
State of New York.

W I T N E S S E T H

WHEREAS, Section 14-d of the Transportation Law authorizes  
the Commissioner to enter into contracts with any railroad  
company for the purpose of maintaining and improving rail  
transportation service over its lines, and

WHEREAS, Railroad has identified certain capital projects  
for which it seeks state funds, and

WHEREAS, the State desires to improve rail service to  
active and potential shippers along the rail lines of Railroad  
and thereby protect the industries and their employees, which  
are major contributors to the regional economy, and

WHEREAS, it is Railroad's desire to upgrade its physical  
plant in order to achieve a profitable operation and enable it  
to continue its service, and

WHEREAS, funds have been appropriated to the Department for the payment of the cost of the projects to be undertaken in accordance with the provisions of Section 14-d of the Transportation Law,

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises, conditions, terms and obligations herein set forth, do agree and covenant as follows:

#### ARTICLE ONE

#### DEFINITIONS

"Agreement" means this document and any attachments and amendments made to it.

"Project Costs" means those costs as defined and contemplated in Section 2.3 for accomplishing the work set forth the Work Schedule (Appendices 1A to 1D of this Agreement).

"Project Facilities" means the facilities listed in Appendices 1A to 1D which are located on underlying Railroad property, but does not include the underlying property, and which have been or will be in whole or in part reconstructed, improved or rehabilitated by or on behalf of Railroad pursuant to the provisions of this Agreement in accordance with the work program set forth in the Work Schedule (Appendices 1A to 1D of this Agreement).

ARTICLE TWO  
CAPITAL IMPROVEMENTS

Section 2.1. Description of Work

Railroad agrees to complete the work described in the Work Schedules constituting Appendices 1A to 1D of this Agreement (hereinafter collectively referred to as the "Work Schedules") which are attached hereto and made a part hereof in accordance with plans and specifications to be approved by the Commissioner and the Railroad as such plans and specifications may be modified or amended, and within the time limits specified in said Work Schedule or any extension thereof. Any time limits for the accomplishment of work which are set forth in said Work Schedule may be extended or modified by mutual agreement between the parties and any such extension or modification shall not be unreasonably withheld by either party. Prior to commencing any work, Railroad shall provide the Commissioner with a project budget and a schedule for accomplishing the work described in the Work Schedules. No work to be financed by the State may begin without written approval from the Commissioner, which approval shall not be unreasonably withheld.

Section 2.2. Maintenance

Railroad agrees to maintain at its own expense the Project Facilities in good order and repair in accordance with standards of maintenance as specified in the Maintenance Schedule



(Appendix 2). Railroad will report to State annually by March 31, the amount of maintenance work accomplished upon the Project Facilities during the preceding year to comply with the requirements of Appendix 2.

### Section 2.3. Reimbursement

State certifies that it has monies available and will reimburse Railroad for one hundred percent (100%) of the Project Costs, up to a maximum of TWENTY MILLION NINE HUNDRED THOUSAND DOLLARS (\$20,900,000) which Railroad incurs for work performed as described in the Work Schedule (Appendices 1A to 1D).

Said costs shall include the cost of preliminary and construction engineering and applicable sales and use taxes as well as all other costs incurred by Railroad under this Agreement for work performed under Appendices 1A to 1D, for which reimbursement is made under 23 CFR Part 140 Subpart-I, as currently promulgated. By reference to said 23 CFR Part 140 Subpart-I, as currently promulgated, the provisions thereof are deemed to be included herein and are binding upon the parties to the same extent as if 23 CFR Part 140 Subpart-I as currently promulgated, had been set forth in full, provided, however, that (i) State shall not be obligated to pay nor shall Railroad claim reimbursement for the use of equipment acquired by Railroad in whole or in part with funds provided by State under this or any other agreement with the State; and (ii) rental charges for Railroad-owned equipment shall not be eligible for reimbursement.

hereunder when State-financed equipment acceptable to Railroad is made available without cost to Railroad for the work to be accomplished at the time and place required.

Railroad shall submit on a monthly basis to State fair and reasonable charges for the cost of the work performed and equipment and facilities provided by Railroad, as evidenced by detailed invoices acceptable to Commissioner. State shall reimburse Railroad in the amount of the approved Project Costs so submitted and verified within thirty (30) days of submission by Railroad. All costs so submitted by Railroad shall be subject to approval by Commissioner and audit by the State Comptroller. Upon the satisfactory completion of all work set forth in the Work Schedules, a final statement of Project Costs shall be submitted to the State within 180 days. The final reimbursement payment to Railroad shall be made within 30 days from the submission of the final statement, or completion of the work, whichever is later, subject to final audit.

#### Section 2.4 Title to Materials

Materials incorporated in the construction of the Project Facilities and paid for by the State as part of the Project Costs shall be the property of the State and ownership thereof shall be vested in the State for their useful life. For the purpose of this Agreement, the useful life of these materials shall be as set forth in Appendix 3. At the end of the useful life of said materials title shall be vested in Railroad automatically

without the need of any execution and delivery of deeds, bills of sale or other title documents.

Section 2.5. Disposition of Facilities

(a) Railroad shall retain sole and exclusive right to transfer or sell the Project Facilities upon prior approval of the Commissioner rendered within 90 days of receipt of notice from Railroad of its intent to sell, which approval shall not be unreasonably withheld, provided that the purchaser or acquiring party agrees to assume all of Railroad's covenants and obligations hereunder, at which time the Agreement with Railroad will be terminated.

(b) In the event that said purchaser or acquiring party does not agree to assume all of the Railroad's covenants and obligations hereunder, Railroad shall reimburse State in accordance with Appendix 3 of this Agreement, at which time this Agreement will be terminated.

Section 2.6. Manner of Performing Work

The work specified in the Work Schedules may be performed by the employment of the forces and the use of the equipment of Railroad or by approved contract, provided, however, that State may not, without Railroad's approval, perform any such work with its own forces and further provided that no agent or contractor of the state may perform any part of such work without providing for insurance coverage satisfactory to railroad.

Section 2.7. Inspection

During the term of this Agreement, the Commissioner shall have the right to enter upon the premises of Railroad for the purposes of inspecting and examining the condition of the Project Facilities and any activities conducted pursuant to this Agreement. Such right shall be exercised only at reasonable times and upon prior notice to Railroad.

Section 2.8. Use of Project Facilities

Railroad shall use the Project Facilities in compliance with all applicable Federal, State and local laws, ordinances and regulations in any way relating to the possession, use or maintenance thereof.

ARTICLE THREE

GENERAL PROVISIONS

Section 3.1. Force Majeure

The obligations of the parties hereunder shall be subject to force majeure (which shall include strikes, riots, floods, accidents, acts of God, fire, lockouts, epidemics, insurrections, acts of public enemies, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for nonperformance), but only as long as, and to the extent that such force majeure shall prevent performance of such obligations, except that no party shall be

required to settle any strike, lockout or industrial disturbance by acceding to the demands of the opposition.

### Section 3.2. Successors and Assigns

All the covenants and obligations of the parties hereunder shall bind their successors and assigns.

### Section 3.3. Interpretation

The Article and Section headings utilized in this Agreement are for convenience only and shall not affect the construction hereof. This Agreement shall be construed in accordance with and governed by the laws of the State of New York. All appendices attached hereto are integral parts of this Agreement and the provisions set forth in the appendices shall bind the parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement. Nothing expressed or implied herein shall give or be construed to give to any person, firm or corporation other than State or Railroad any legal or equitable right, remedy or claim under or in respect to this Agreement. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, except by an instrument in writing signed by the Commissioner and Railroad unless a provision hereof expressly permits either of said parties to effect termination, amendment, supplementation, waiver or

modification, in which event such action shall be taken in accordance with the terms of such provision.

Section 3.4. Notices

Any request, demand, authorization, direction, notice, consent, waiver, or other document provided for or permitted by this Agreement to be made upon, given or furnished to, or filed with one party by the other party, shall be in writing and shall be delivered by hand or by certified mail of the United States, postage prepaid, if to Commissioner, in an envelope addressed as follows:

Commissioner of Transportation  
State of New York  
Department of Transportation  
1220 Washington Avenue  
State Campus  
Albany, New York 12232

and if to Railroad, in an envelope addressed to the attention of:

President  
Delaware and Hudson Railway Company  
40 Beaver Street  
Albany, New York 12207

Each party may change the address at which it shall receive notification hereunder by notifying the other of such change.

Section 3.5. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original.

Section 3.6. Relationship of Parties

The relationship of the Railroad to the State is that of an independent contractor, and said Railroad, in accordance with its status as such contractor, covenants and agrees that it will conduct itself consistent with such status; that it will neither hold itself out as nor claim to be an officer or employee of the State by reason hereof, and that it will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the State, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

Section 3.7. Records and Documents

Railroad shall maintain books, records and supporting documents in connection with the work to be accomplished pursuant to this Agreement. For a period of three (3) years from the date of submission of the final bill by Railroad, all books, records, bills, vouchers, payrolls, invoices and other documents of every type and description pertaining to the work under this Agreement shall be available to the Commissioner or the State Comptroller, or their authorized representatives, for inspection and audit during normal working hours at Railroad headquarters where such documents are kept. Railroad's records shall include payrolls and time records, material consumption reports, business expense statements, paid invoices and

contracts evidencing in detail the nature of the charge for which reimbursement has been sought.

Section 3.8. Indemnification

(a) Railroad agrees to indemnify and save harmless State and its employees from any and all liability for injury to or death of any person or persons and for loss of, damage to, or destruction of any property or equipment which arises from activities conducted by or on behalf of Railroad pursuant to this Agreement, except when attributable to the fault or negligence of the State or its agents, employees, or contractors, other than Railroad.

(b) State, at its sole cost and expense shall defend any suit, action or proceeding instituted against Railroad and shall indemnify and hold harmless Railroad, its directors, officers and employees from and against any damages, liabilities, costs and expenses (including reasonable professional fees and expenses) arising from any such suit, action or proceeding insofar as such suit, action or proceeding is based upon alleged acts or omissions of the State, its officers, employees or agents in connection with the Project, provided that the limit of State's liability under this Agreement for alleged acts or omissions of its agents or contractors other than Railroad shall be the amount of the liability insurance obtained by such agent or contractor available to meet such liability.



(c) In case suit shall at any time be brought against State asserting a liability against which Railroad agrees in paragraph (a) hereof to indemnify and save harmless State, Railroad shall, at its own cost and expense and without any cost or expense whatever to State defend such suit and indemnify and save harmless State against all costs and expenses thereof (including reasonable professional fees and expenses) and promptly pay or cause to be paid any final judgment recovered against State; provided, however, that State shall promptly upon the bringing of any such suit against it give notice to Railroad and thereafter provide all such information as may from time to time be requested. State shall furnish to Railroad all such information relating to claims made for injuries, deaths, losses, damage, or destruction of the type covered by this section as Railroad may from time to time request.

Section 3.9. Approval of Contracts: Service Contracts and Rental of Equipment and Material Acquisitions.

Upon approval by the State to subcontract a portion of work, Railroad shall invite bids from contractors. Railroad will also invite bids from vendors for open-market purchases. Said bids shall be solicited in accordance with approved State procedures. Railroad will forward to State all bids for State's review and approval of the recommended vendor. Approval will be forwarded to Railroad's Purchasing Department within a reasonable time indicating the Commissioner's approval and authorized

to enter into a contract or purchase order agreement. When Commissioner's written approval is received, Railroad will prepare the contract or purchase order, whereupon Railroad will furnish to State six (6) copies of the contract or purchase order for review and approval. Two (2) copies of said contract or purchase order approved by Commissioner and State Comptroller will be returned to the Railroad within a reasonable time with Commissioner's authorization to commence work as outlined in the contract.

Section 3.10. Effective Date of Agreement

This Agreement shall take effect at the time at which it is approved by the State Comptroller and only if GTI acquires D&H.

Section 3.11. Term of this Agreement

The term of this Agreement shall be thirty (30) years commencing with the effective date hereof, unless previously terminated in accordance with Section 2.5, Disposition of Facilities or Section 3.12, Termination Clause.

Section 3.12. Termination Clause

State reserves the right to terminate or suspend this Agreement, for the State's convenience. Such right of termination or suspension shall be exercised at the discretion of Commissioner by delivery of written notice thereof to Railroad and such termination or suspension shall thereupon take

effect immediately. However, nothing in this Agreement or in this Section shall relieve State of its obligation to reimburse Railroad for costs and expenses which Railroad has in good faith incurred or committed itself to under the terms or for the purposes of this Agreement prior to such termination or suspension.

Section 3.13. Non-Waiver

No covenant or condition of this Agreement can be waived except by the written consent of Commissioner and the Railroad. Forbearance or indulgence by State in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Railroad, and until complete performance by Railroad of such covenant or condition, State shall be entitled to invoke any remedy available to it under this Agreement despite said forbearance or indulgence.

Section 3.14. Severability

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein. The foregoing shall not relieve the State of its obligation to reimburse Railroad for expenses incurred in furtherance of the Agreement.

Section 3.15. Documents Forming Agreement

This Agreement shall consist of this document and the following attachments:

- Appendix 1 - Work schedules
  - 1A - Rehabilitation - Susquehanna Division
  - 1B - East Binghamton Locomotive Repair Facility
  - 1C - SK Yard - Buffalo (JX Portion)
  - 1D - North-end Main Line - Fort Edward to Port Kent
- Appendix 2 - Maintenance Schedule
- Appendix 3 - Useful Life Schedule
- Appendix A - New York State Required Contract Provisions

With respect to Sections IIIA and IIIB of Appendix A, State and Railroad understand and agree that the hours of labor of Railroad's employees are governed exclusively by the Federal Hours of Service Act, 34 Stat. 1415 (1907), as amended, and that the prevailing rate of wages for Railroad's employees shall be that rate determined by Railroad. Railroad and State further understand and agree that if Railroad subcontracts with a third party not engaged in interstate commerce to perform an obligation of this Agreement, the above sections will apply to the subcontractor. These understandings are essential to this Agreement, and any subsequent legislation, judicial or administrative decisions, or opinions of the State Attorney General inconsistent with these understandings shall relieve both parties of their obligations hereunder until a mutually acceptable substitute understanding is reached.

DELAWARE AND HUDSON RAILWAY COMPANY

BY \_\_\_\_\_

PEOPLE OF THE STATE OF NEW YORK

BY *E. R. Blum*

Title \_\_\_\_\_

Approved

\_\_\_\_\_  
Attorney General

Approved

\_\_\_\_\_  
For the Comptroller  
Pursuant to Section 112  
State Finance Law

# WORK SCHEDULE\*

## Appendix 1A

### REHABILITATION - SUSQUEHANNA DIVISION Between East Binghamton and DE Cabin to be Completed by December 31, 1986

Description:		Subtotal
ELEMENT I		
	INSTALL 99700 TIES	3,489,500
ELEMENT II		
	INSTALL 50.70 MILES OF 112/132CWR	4,466,924
IIA	Rail to be purchased	1,186,000
ELEMENT III		
	SURFACING 170.00 TRACK MILES	1,086,300
ELEMENT IV		
	REHAB 13 INTERLOCKINGS	650,000
ELEMENT V		
	INSTALL 1086 FIELD WELDS	325,800
ELEMENT VI		
	INSTALL 240 BONDED INS. JOINTS	204,000
ELEMENT VII		
	REHAB 30 MAIN LINE TURNOUTS	990,000
ELEMENT VIII		
	REHAB 9 GRADE CROSSINGS	90,000
ELEMENT IX		
	REHAB VARIOUS BRIDGES AND CULVERTS	100,000
ELEMENT X		
	Rehabilitation Susquehanna River Bridge #190.17	2,055,000
ELEMENT XI		
	EQUIPMENT RENTAL	200,000
ELEMENT XII		
	SUPERVISION AND ADMINISTRATION	425,566
	GRAND TOTAL	15,269,090

\*Work limits and detail to be furnished as contained in the plans and specifications referred to in Section 2.1.

## WORK SCHEDULE

### Appendix 1B

Design, engineer and construct a  
diesel locomotive repair facility at  
East Binghamton, New York

\$3,000,000\*

The following constitutes a list of the major items to be included.

1. Property acquisition
2. Design and Planning
3. Grading, Ditching and Utilities
4. Shop - Structural
5. Shop - Electrical
6. Shop - Plumbing
7. Shop - HVAC
8. Shop - Equipment
9. Environmental Facility
10. Track
11. Auxiliary Facilities
12. Construction Engineering

Above facility to be completed December 31, 1986.

\*It is contemplated that the completion of the facility will include some Railroad participation in funding. Approval by the Commissioner of the plans and specifications will be contingent on the plans and specifications submitted by Railroad containing provisions to the effect that the completion of the facility will be made with the state's participation being limited to \$3,000,000.

## WORK SCHEDULE

### Appendix 1C

Perform various elements of construction and rehabilitation work at SK Yard in Buffalo, New York (JX Yard Portion)

1. Renew steel in 18 turnouts	\$360,000
2. Retire 6 unused turnouts and realign leads west end of yard and surface	50,000
3. Relay track 41 with relayer rail	65,000
4. Install drainage ditches	75,000
5. Install air compressor	25,000
6. Supervision and Administration	25,000

TOTAL	\$600,000
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Above work to be completed by December 31, 1985 and not to be commenced prior to May 31, 1984 unless otherwise notified by the Commissioner.

In the event both parties agree that use by Railroad of Bison Yard in place of SK Yard would be more feasible and in fact is accomplished, the funds herein allocated may be applied to items at Bison Yard.



## WORK SCHEDULE

### Appendix 1D

#### North End Main Line Fort Edward to Port Kent Rehabilitate Track

1.	Install 26,600 ties between Interlockings SR and SJ <i>114 - 140</i>	\$ 931,000
2.	Install 15,400 ties between Interlockings HM and SC <i>58 - 78</i>	539,000
3.	Surface and line track between Interlockings SR-SJ - 44 miles <i>114 - 140</i>	281,160
4.	Surface and line tracks between Interlockings HM-SC - 25 miles <i>58 - 78</i>	159,750
5.	Supervision and Administration	120,000
TOTAL		\$2,030,910

Work to be completed by December 31, 1986.

Work limits and detail to be furnished as contained in the plans and specifications referred to in Section 2.1.

## Appendix 2

### Maintenance Schedule

Railroad agrees to maintain project facilities as described in Appendices 1A through 1D (a) for a period of 8 years from date of this agreement to comply with a standard equal to that for FRA Class III trackage and (b) for the remaining 22 years of the term of this agreement, it agrees to maintain such facilities commensurate with facility usage. Optimum operating speeds shall be established by Railroad.

With respect to the facilities described in Appendix 1C, Railroad agrees to maintain them to Class I standards, and with respect to the facility described in Appendix 1B, Railroad agrees to maintain it to generally accepted industry standards.

### Appendix 3

#### Useful Life Schedule

Fully depreciated life of project costs for (a) materials installed and (b) labor applied under this contract, will be considered as follows:

Rail	10 years
Ties	30 years
Switch Timber	15 years
Bridge Repair	30 years
Building	15 years

In the event that this Agreement is terminated by Railroad for any reason, Railroad will reimburse the State a monetary amount equivalent to the depreciated value of the Project Costs including the cost of ties, spikes, plates, anchors, switch ties and bridge ties, whereupon State shall transfer to the Railroad free and clear of all taxes its ownership of all materials used for the purpose of accomplishing the work set forth in the Work Schedules (Appendices 1A to 1D). This monetary amount shall be determined by use of straight line depreciation method, using the above specified useful life periods for project facilities. For the purpose of such determination, depreciation shall begin at the date of the letter authorizing construction to commence with respect to each project specified in Appendices 1A through 1D respectively.

The parties to the attached contract further agree to be bound by the following, which are hereby made a part of said contract:

I. This contract may not be assigned by the contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the State.

II. This contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for the purpose thereof.

III. The contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended, that:

- (a) no laborer, workman or mechanic, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
- (b) the wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.
- (c) the minimum hourly rate of wages to be paid shall not be less than that stated in the specifications, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.
- (d) The Labor Law provides that the contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than --
  - (a) the stipulated wage scale as provided in Labor Law, Section 220, subdivision 3, as amended, or
  - (b) less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.

IV. The contractor specifically agrees, as required by the provisions of the Labor Law, Section 220-e as amended that --

- (a) In hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
- (b) No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin.
- (c) There may be deducted from the amount payable to the contractor by the State under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract, and
- (d) this contract may be cancelled or terminated by the State or municipality and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract, and
- (e) the aforesaid provisions of this section covering every contract for or on behalf of the state or municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

V. During the performance of this contract, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.
- (b) If directed to do so by the Commissioner of Human Rights, the contractor will send to each labor union or representative of workers with which the contractor has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner of Human Rights, advising such labor union or representative of the contractor's agreement under clauses (a) through (g) (hereinafter called "non-discrimination clauses"). If the contractor was directed to do so by the contracting agency as part of the bid or negotiation of this contract, the contractor shall request such labor union or representative to furnish a written statement that such labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability or marital status, and that such labor union or representative will cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses and that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the contractor shall promptly notify the State Commissioner of Human Rights of such failure or refusal.

- (c) If directed to do so by the Commissioner of Human Rights, the Contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses (a) and (b) and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.
- (d) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability or marital status.
- (e) The contractor will comply with the provisions of Sections 290—299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to the contractor's books, records and accounts by the State Commissioner for the purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.
- (f) This contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the contractor has not complied with these non-discrimination clauses, and the contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until the contractor satisfies the State Commissioner of Human Rights that the contractor has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the contractor and an opportunity has been afforded the contractor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.
- (g) The contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the State Commissioner of Human Rights or the contracting agency may direct, including sanctions or remedies for non-compliance. If the contractor becomes involved in or is threatened with litigation with the subcontractor or vendor as a result of such direction by the State Commissioner of Human Rights or the contracting agency, the contractor shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

VI. (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

- 1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- 2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;
- 3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

- (b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determined that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph VI (a).

VII. The agreement shall be void and of no force and effect unless the contractor shall provide coverage for the benefit of, and keep covered during the life of this agreement, such employees as are required to be covered by the provisions of the Worker's Compensation Law.

18  
SUBSIDY

D-000364

THIS AGREEMENT made this       day of       , 1983, by and between the People of the State of New York (hereinafter referred to as "State" or "Subsidizer") acting by and through the Commissioner of Transportation or his authorized representative, and the Department of Transportation (hereinafter referred to as "Commissioner" and "Department", respectively) and Delaware and Hudson Railway Company (hereinafter referred to as "Railroad"), a Delaware Corporation duly authorized to do business in the State of New York.

W I T N E S S E T H

WHEREAS, Section 14-d of the Transportation Law authorizes the Commissioner to enter into contracts with any railroad company for the purpose of maintaining and improving rail transportation service over its lines, and

WHEREAS, the State desires to maintain rail services to active and potential shippers along the rail lines of Railroad and thereby protect the industries and their employees, which are major contributors to the regional economy, and to maintain competitive mainline rail service through New York State, and

WHEREAS, the Railroad has requested a subsidy to assist in continuing such rail service, and

WHEREAS, the State has agreed to provide a subsidy based on the Railroad's request and on the State's desire to preserve vital rail freight service

NOW, THEREFORE, the parties do hereby mutually agree that Railroad shall perform rail freight services and shall be compensated by the Subsidizer therefor as follows:

#### ARTICLE ONE

#### DEFINITIONS

Section 1.01. Definitions. The following words and phrases shall have the following meanings ascribed to them unless the context clearly determines otherwise:

"Costs of providing service" shall mean and include all costs of providing service as are defined and included in Attachment 2 as reimbursable to the Railroad.

"Maintenance" means the normal and regular work required to keep a rail facility in the condition necessary to continuously perform the level of rail freight service required by this Agreement.

"Rail facility and rail facilities" collectively mean the track, bridges, signals, switches, structures and related railroad transportation property located on the one or more rail segments over

which rail freight service is to be provided pursuant to this Agreement as identified in Attachment 1 hereof.

"Rail Freight service" means that service to be provided by Railroad pursuant to this Agreement as more fully described in Attachment 1.

## ARTICLE TWO

### OPERATING PLAN

Section 2.01. Provision of Service. Railroad shall provide rail freight service to customers located in New York State and provide competitive rail service through New York State over the rail facilities shown by the system map identified as Attachment 1 for the term of this Agreement.

Section 2.02. Force Majeure; Excuse. The obligations of the parties hereunder shall be subject to force majeure (which shall include strikes, riots, floods, accidents, acts of God, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for non-performance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations. The foregoing shall not relieve the Subsidizer of its obligation to reimburse Railroad for expenses incurred in good faith in furtherance of this Agreement.



### ARTICLE THREE

#### MANAGEMENT AND CONTROL

Section 3.01. Control. Subject to exceptions specifically noted in this Agreement, Railroad shall have exclusive control in the management and operation of the rail freight service, including the dispatching of trains, assignment of available cars, assignment of crews, and assignment and substitution of power, provided, however, that the Subsidizer shall be notified of and shall have the right to approve any substitution or assignment which results in, or could result in major increased operating costs, which approval will not be unreasonably withheld.

Section 3.02. Operating Rules and Regulations. Railroad shall have exclusive authority to promulgate and adopt rules and regulations for the operation of the rail freight service consistent with any applicable State or Federal Law..

### ARTICLE FOUR

#### MAINTENANCE

Section 4.01. Responsibility. Railroad shall be responsible for providing all maintenance on owned rail facilities and shall maintain such facilities to comply with the Federal Railroad Administration (FRA) track safety standards applicable to the authorized operating speeds on those rail lines described in Attachment 1 hereof and owned by Railroad, provided that nothing contained herein shall prevent Railroad from

applying restrictions on the rail lines described, as the circumstances may from time to time require.

Section 4.02. Safety Waivers. Railroad shall be responsible for requesting safety waivers, or transfers of such waivers, if FRA Class 1 standards are not met.

## ARTICLE FIVE

### LIABILITY

Section 5.01. Railroad's Liability. When any loss, damage, destruction, injury or death occurs as a result of the management, control, use or operation by Railroad of rail freight service described in this Agreement and the rail facilities appertaining thereto, Railroad hereby agrees to indemnify and hold harmless the State from any such loss or liability, including all related costs and counsel fees, arising after the date of this Agreement.

Section 5.02. Insurance. Railroad shall procure and continue in effect personal injury and property damage liability insurance with coverage of at least 10 million dollars. State shall not be liable for and will not participate in any way in the administration or payment of loss or damage claims. For purposes of this Section 502, Railroad's existing policy, which provides coverage in excess of such amount, is acceptable to State. Railroad will provide State with a certificate of insurance showing that such coverage is in effect.

ARTICLE SIX  
COMPENSATION

Section 6.01. Compensation. As estimated in Attachment #2, Railroad shall receive a local freight service subsidy payment equal to total costs, less Railroad's revenues (in accordance with 1982 ICC accounting standards) which are each attributable to the rail facilities over which rail freight service is provided hereunder and applicable to traffic with origins or terminations in New York State and to traffic moved through New York State. In the computation of the total costs as above described, no recognition shall be given for the depreciation costs attributable to capital investments made by the State nor for costs reimbursable under other ongoing contracts with the State in the form of capital projects.

Section 6.02. Payment Schedule. Monthly operating subsidy payments shall be paid on the basis of the estimated loss per carload detailed in Attachment 2 for each revenue carload with origins or terminations in New York State and for each revenue carload which is moved through New York State by the Railroad. Payments shall be made to the Railroad on the 15th day of each month beginning in January, 1984 and shall equal the estimated loss per carload for the system multiplied by the estimated number of revenue carloads originated in, terminated in and/or moved through New York State by the Railroad. By the 10th day of each month, the Railroad shall submit a report on the actual number of revenue carloads qualifying for subsidy during the previous month. Subsequent subsidy payments will be adjusted upward or downward based upon the difference between the actual and estimated subsidy carloads qualified by the terms of this Agreement. State also reserves the right to adjust the

loss per carload paid based upon the reports submitted pursuant to Section 7.02 of this Agreement. Subsidy payments made under this Agreement shall not exceed 3 million dollars. A final settlement will be made upon completion of audit at the end of the term of this Agreement based on actual revenues, costs and carloadings.

## ARTICLE SEVEN

### ACCOUNTING REPORTS

Section 7.01. Record Keeping. Railroad will keep accounting records in accordance with the 1982 Interstate Commerce Commission Standards and any additional records deemed necessary by the State.

Section 7.02. Report Schedule. Monthly reports of system revenues and costs of providing service, along with number of revenue carloads shipped, received, or moved on the Railroad's system will be issued to the State within twenty (20) days after each month of continuous operation under this Agreement. A final report will be issued to the State within thirty (30) days following the end of the subsidy period covered by this Agreement.

Section 7.03. Audit and Inspection. Upon reasonable notice, Railroad will allow the auditors of the Subsidizer or of any governmental agency having jurisdiction over Railroad, to audit all the records of Railroad that were used to determine the revenues and costs related to the rail continuation subsidy. All such records will be kept for a period of four

years after the issuance of the final report for the related year and any such records that are the subject of an auditing dispute shall be kept for the term of that dispute.

## ARTICLE EIGHT

### CONTRACT TERM, RENEWAL

#### AND

### RENEGOTIATION

Section 8.01. Term. This Agreement shall be in effect for six (6) months from the effective date hereof as determined by Section 13.01 below, subject to the termination provisions of Article Nine hereof.

## ARTICLE NINE

### TERMINATION AND CANCELLATION

Section 9.01. Termination Clause. The State or Railroad shall have the right to terminate or suspend this Agreement. Such right of termination or suspension shall be exercised at the discretion of the Commissioner or of the President of the Railroad by delivery of written notices thereof to either party, and such termination or suspension shall thereupon take effect immediately. However, nothing in this Agreement or in this Section 9.01 shall relieve the State of its obligation to pay a subsidy amount to the Railroad for costs and expenses incurred or committed in

good faith under the terms of, or for the purposes of this Agreement prior to such termination or suspension.

## ARTICLE TEN

### REPRESENTATION AND WARRANTIES

Section 10.01.     Railroad. Railroad represents and warrants the following:

(a) Railroad is a corporation duly organized in the State of Delaware, validly existing and in good standing under the laws of the State of New York and is duly qualified to do business in the State of New York;

(b) Railroad has the full power and authority to enter into this Agreement and to carry out the functions which it has undertaken in this Agreement.

(c) All corporate and other proceedings required to be taken by or on the part of Railroad to authorize it to enter into this Agreement and perform the rail freight service called for herein have been duly taken.

(d) The execution of this Agreement and the operation of the rail freight service will not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.

Section 10.02. The Subsidizer. The Subsidizer represents and warrants the following:

(a) The Subsidizer is duly organized, validly existing and in good standing under the laws of its domicile;

(b) The Subsidizer has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement;

(c) The entering into and performance of this Agreement on the part of the Subsidizer does not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body;

#### ARTICLE ELEVEN

##### GENERAL PROVISIONS

Section 11.01. Captions. The captions used in this Agreement are used for convenience and identification purposes only and do not form a part of the Agreement.

Section 11.02. Entire Agreement. This Agreement together with all attachments, appendices and schedules annexed hereto contain the entire agreement of the parties and supersedes any and all prior agreements or oral understandings between the parties.

Section 11.03. Amendment. No term or provision of this Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought; provided, however, that when an emergency situation arises, such as a change in service frequency or emergency rehabilitation, changes in this Agreement may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telegram or other delivered writing.

Section 11.04. Choice of Law. This Agreement shall in all respects be governed by the laws of the State of New York.

Section 11.05. Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided for or permitted by this Agreement to be made upon, given or furnished to, or filed with one party by the other party, shall be in writing and shall be delivered by hand or by certified mail of the United States, postage prepaid, if to Commissioner, in an envelope addressed as follows:

Commissioner of Transportation  
State of New York  
Department of Transportation  
1220 Washington Avenue  
Albany, New York 12232

and if to Railroad, in an envelope addressed to the attention of:

President  
Delaware and Hudson Railway Company  
40 Beaver Street  
Albany, New York 12207



Each party may change the address at which it shall receive notification hereunder by notifying the other of such change.

Section 11.06. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original.

Section 11.07. Governmental Approval. Whenever an action of one of the parties is required by the Agreement which action is subject to the approval or consent of a governmental agency, the requirement of this Agreement shall be deemed satisfied if the party has applied for that approval and uses and continues to use its best efforts to obtain such approval or consent without delay.

Section 11.08. Severability. If any term, covenant, condition or provision (or part thereof) of this Agreement or the application thereof to any party or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision (or remainder thereof) to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 11.09. Relationship of Parties. The relationship of Railroad to the Subsidizer is that of an independent contractor, and said Railroad in accordance with its status as such contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither

hold itself out as nor claim to be an officer or employee of the Subsidizer by reason hereof, and that it will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Subsidizer including, but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

Section 11.10. Approval of Contracts. Railroad shall not execute any contract, subcontract or amendment thereto, or obligate itself in any other manner with any third party which by its terms would conflict with this Agreement without the prior written approval of the Subsidizer.

Section 11.11. Worker's Compensation. This Agreement shall be void and of no effect unless the Railroad shall secure compensation insurance for the benefit of and keep insured during the life of this Agreement such employees engaged therein as are required to be insured by the provisions of the Worker's Compensation Law of the State of New York.

Section 11.12. Prohibited Interests. No member, officer, employee of the Subsidizer during his tenure or one year thereafter, may have any interest, direct or indirect, in this Agreement or proceeds thereof; provided, however, that Railroad or a past or present member, officer, or employee of the Subsidizer may, for good cause, request and receive a waiver of the application of this provision from the Commissioner.

## ARTICLE TWELVE

### REQUIRED STATE CONTRACT CLAUSES

Section 12.01. Required State Clauses. Railroad agrees to comply with all of the New York State required contract clauses set forth in Appendix A annexed hereto and made a part hereof and specifically agrees that in any work performed by independent contractor through non-railway forces, it will comply with the sections of the Labor Law set forth in said attachment.

## ARTICLE THIRTEEN

### EFFECTIVE DATE

Section 13.01. Effective Date. This Agreement shall become effective on the date it is approved by the Comptroller of the State of New York and only if Cuillford Transportation Industries acquires Railroad.

## ARTICLE FOURTEEN

Section 14.01. Documents Forming Agreement. This Agreement shall consist of this document and the following attachments:

- |              |   |   |
|--------------|---|---|
| Attachment 1 | - | Rail Facilities and Services to be Subsidized |
| Attachment 2 | - | Estimated Costs of Providing Service          |
| Appendix A   | - | New York State Required Contract Provisions   |

DELAWARE AND HUDSON RAILWAY COMPANY

PEOPLE OF THE STATE OF NEW YORK

BY \_\_\_\_\_

BY \_\_\_\_\_

CORPORATE  
SEAL

Title \_\_\_\_\_

Approved

\_\_\_\_\_  
Attorney General

Approved

\_\_\_\_\_  
For the Comptroller  
Pursuant to Section 112  
State Finance Law

STATE OF NEW YORK )

COUNTY OF ALBANY )

On this            day of            , 1983, before me personally came,  
to me known and known to me to be the  
of the Delaware and Hudson Railway Company described herein and as such  
is duly authorized by the said Company to execute the above Agreement  
between the Delaware and Hudson Railway Company and the State of New  
York.

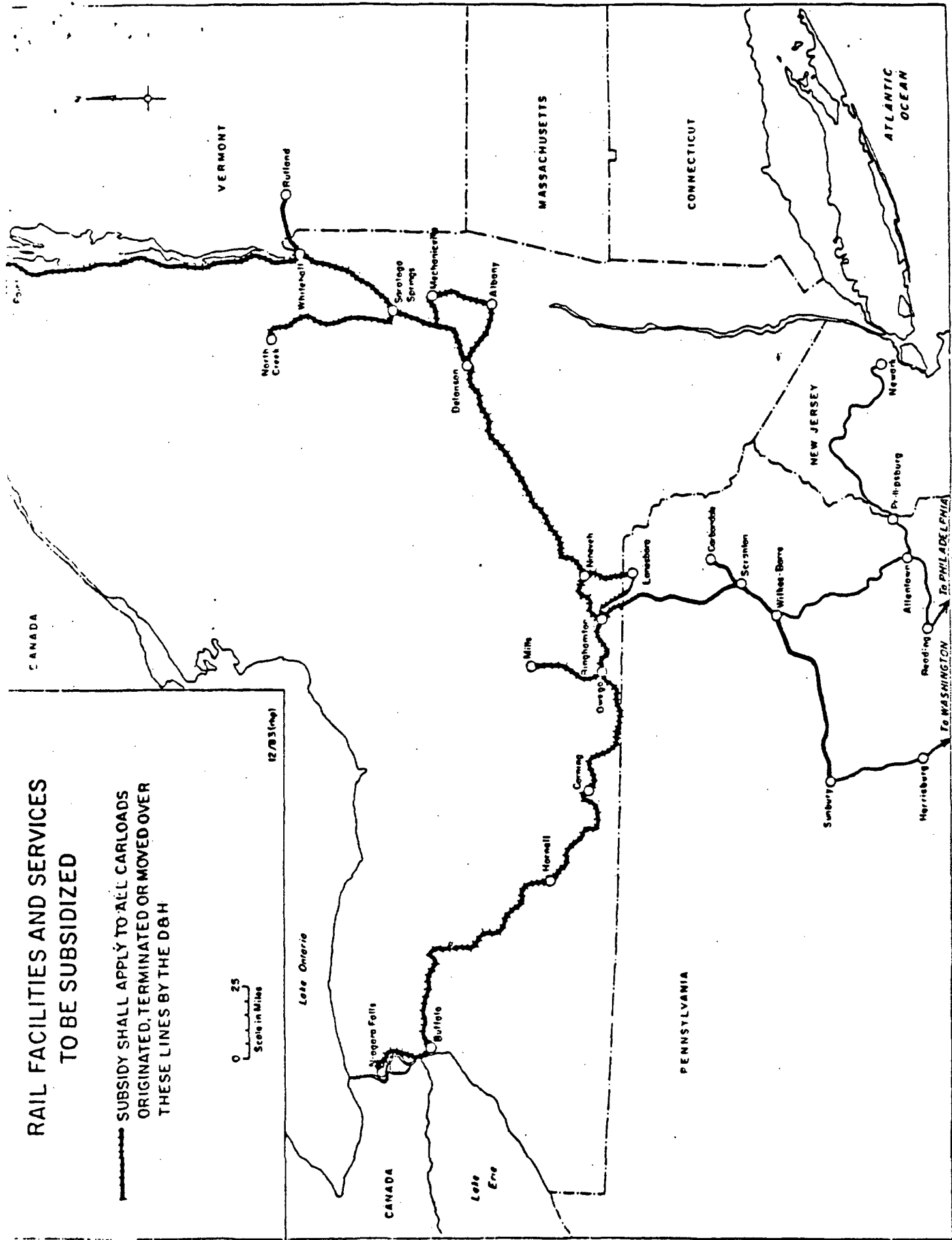
\_\_\_\_\_  
NOTARY PUBLIC

# RAIL FACILITIES AND SERVICES TO BE SUBSIDIZED

SUBSIDY SHALL APPLY TO ALL CARLOADS  
ORIGINATED, TERMINATED OR MOVED OVER  
THESE LINES BY THE D&H

0 25  
Scale in Miles

12/83(mg)



DELAWARE AND HUDSON RAILWAY COMPANY

\*1984 Pro Forma Income Statement

(Dollars in Thousands)

January - June

Six Months

Operating Revenues	
Freight	\$50,214
Total	<u>\$50,214</u>
Operating Expenses	53,871
Net Railway Operating Income (Loss)	(3,657)
Other Income - Net	191
Fixed Charges	<u>1,560</u>
Net Income (Loss)	<u>(5,026)</u>
Carloads (System)	67,160
Loss/Carload	\$74.83

ESTIMATED NEW YORK STATE CARLOADINGS  
QUALIFIED FOR SUBSIDY WITH  
ORIGINS IN, TERMINATIONS IN,  
AND/OR MOVED THROUGH NEW YORK STATE

6 mos.      63,802 cls.

Loss/Carload = \$74.83

\* Compiled in accordance with 1982 ICC Accounting Standards .

Attachment #2

The parties to the attached contract further agree to be bound by the following, which are hereby made a part of said contract:

I. This contract may not be assigned by the contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the State.

II. This contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for the purpose thereof.

III. The contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended, that:

- (a) no laborer, workman or mechanic, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
- (b) the wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.
- (c) the minimum hourly rate of wages to be paid shall not be less than that stated in the specifications, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.
- I) The Labor Law provides that the contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than --
  - (a) the stipulated wage scale as provided in Labor Law, Section 220, subdivision 3, as amended, or
  - (b) less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.

IV. The contractor specifically agrees, as required by the provisions of the Labor Law, Section 220-e as amended that --

- (a) In hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
- (b) No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin.
- (c) There may be deducted from the amount payable to the contractor by the State under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract, and
- (d) this contract may be cancelled or terminated by the State or municipality and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract, and
- (e) the aforesaid provisions of this section covering every contract for or on behalf of the state or municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

V. During the performance of this contract, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.
- (b) If directed to do so by the Commissioner of Human Rights, the contractor will send to each labor union or representative of workers with which the contractor has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner of Human Rights, advising such labor union or representative of the contractor's agreement under clauses (a) through (g) (hereinafter called "non-discrimination clauses"). If the contractor was directed to do so by the contracting agency as part of the bid or negotiation of this contract, the contractor shall request such labor union or representative to furnish a written statement that such labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability or marital status, and that such labor union or representative will cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses and that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the contractor shall promptly notify the State Commissioner of Human Rights of such failure or refusal.

- (c) If directed to do so by the Commissioner of Human Rights, the Contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses (a) and (b) and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.
- (d) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability or marital status.
- (e) The contractor will comply with the provisions of Sections 290—299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to the contractor's books, records and accounts by the State Commissioner for the purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.
- (f) This contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the contractor has not complied with these non-discrimination clauses, and the contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until the contractor satisfies the State Commissioner of Human Rights that the contractor has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the contractor and an opportunity has been afforded the contractor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.
- (g) The contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the State Commissioner of Human Rights or the contracting agency may direct, including sanctions or remedies for non-compliance. If the contractor becomes involved in or is threatened with litigation with the subcontractor or vendor as a result of such direction by the State Commissioner of Human Rights or the contracting agency, the contractor shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

VI. (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

- 1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- 2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;
- 3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

- (b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determined that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph VI (a).

II. The agreement shall be void and of no force and effect unless the contractor shall provide coverage for the benefit of, and be covered during the life of this agreement, such employees as are required to be covered by the provisions of the Worker's Compensation Law.



In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law and the regulations of the Comptroller of the State of New York promulgated thereunder, the contractor agrees, as a material condition of the contract

That neither the contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder;

That if the contractor or any substantially owned or affiliated person, firm, partnership or corporation has been convicted or subjected to a final determination by the United States Department of Commerce or any other appropriate agency of the United States of a violation of the United States Export Administration Act of 1969, as amended, or the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder, the contractor shall comply with the Comptroller of such conviction or determination in the manner prescribed by the Comptroller's regulations.

EXHIBIT C

D-094102

D-094415

D-094729

SPECIAL PROVISIONS

GTI has prepared an operating plan based on certain assumptions. This plan will necessarily have to change to meet changes in the law, circumstances and economics. Both NYDOT and GTI recognize that the best result for all will be obtained by working towards a private, financially viable D&H. Although it is impossible to anticipate the changes that may be necessary, the present expectations, based on circumstances now known or reasonably foreseeable, are as follows:

1. Depending upon the level of business, GTI expects that D&H will employ between 800 and 1,100 persons within the State of New York. Any reductions in the level of employment of D&H are expected to be proportionate to reductions in employment levels of other GTI railroads.

2. GTI will discuss with Conrail the possibility of relocating D&H's operations from Oak Island to Croxton, provided that such factors as facilities, cost of operating and business opportunities are as good or better at Croxton as they are at Oak Island.

3. GTI will discuss and work with NYDOT or any other agency in New York to attempt to develop a plan for the industrial and/or rail use of the car shop facilities at Oneonta.

4. Assuming that existing traffic patterns and levels remain substantially the same, Mechanicville Yard, and East Binghamton will be used in assembling traffic in the GTI system.

5. Subject to economic and operational practicality, and to the availability of public and private funding, GTI agrees jointly to prepare plans in conjunction with NYDOT to:

- a. Build mechanical and engineering facilities at Mechanicville or another location within the State of New York if there appears to be a reasonable need.
- b. Construct a rail welding plant in the State of New York.
- c. Establish and operate an intermodal facility at Binghamton.
- d. Discuss with Conrail the possibility of extending the car haulage agreement between B&M and Conrail to other railroads in the GTI system.
- e. Establish intermodal service between Montreal and Harlem River Yard in New York City.
- f. Serve lines which connect with GTI lines and which are abandoned. GTI will discuss with NYDOT the possibility of continuing the service to be abandoned, based on a jointly developed plan, provided that any arrangement for such continuation is feasible and beneficial to GTI and that any regulatory approvals or exemptions which may be necessary are obtained. Such lines include: B&O lines to the Rochester area and Staten Island, railroad lines in the Buffalo area and in New York's Metropolitan area.

6. The mainline of D&H from Binghamton to Schenectady to Rouses Point is the mainline of GTI in and through the State of New York.

7. The present plan for the GTI system, including D&H, provides for the diversion and routing of additional traffic over D&H and will facilitate cost reductions on D&H as a result of consolidation.

8. The D&H route to Montreal will be a principal GTI route for Canadian traffic.

9. The D&H route between Albany and Binghamton will be a principal GTI route for traffic moving through the State of New York.

10. D&H shall continue to provide local service on D&H owned lines in New York consistent with good railroad practices.

LIMITATION AGREEMENT

THIS LIMITATION AGREEMENT entered into as of the \_\_\_\_\_ day of December, 1983 by and among THE UNITED STATES OF AMERICA ("United States") represented by the Secretary of Transportation (the "Secretary"), acting through the Federal Railroad Administrator (the "Administrator"),

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DELAWARE AND HUDSON RAILWAY COMPANY, a corporation organized and existing under the laws of the State of Delaware ("D&H"),

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GUILFORD TRANSPORTATION INDUSTRIES, INC., a corporation organized and existing under the laws of the State of Delaware ("Guilford").

WITNESSETH:

WHEREAS, the United States Railway Association, an instrumentality of the United States for which the Secretary is authorized to act for the purposes of this Agreement ("USRA") and D&H entered into a Loan Agreement dated March 15, 1976 and

certain supplemental agreements (the "Loan Agreement") pursuant to which USRA loaned funds to D&H under Section 211(a) of the Regional Rail Reorganization Act of 1973 (the "3R Act"), 45 U.S.C. § 721(a) (all such sums loaned under the Loan Agreement or the supplemental agreements and deferred interest and accrued interest thereon being referred to hereinafter collectively as the "211 Debt" as more specifically identified in Exhibit A hereto); and

WHEREAS, the Administrator and D&H entered into a Financing Agreement dated February 9, 1978 as amended (the "Financing Agreement") pursuant to which the Federal Financing Bank ("FFB") loaned funds to D&H to refinance debt incurred in connection with the acquisition by D&H of certain locomotives in 1976, the repayment of which was guaranteed by the Administrator pursuant to the authority granted under Section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. § 801 et seq. (all such funds loaned under the Financing Agreement and interest accrued thereon being referred to hereinafter collectively as "511 Debt" as more specifically identified in Exhibit B hereto); and

WHEREAS, the Loan Agreement at Sections 4.01 through 4.05, inclusive, and the Financing Agreement at Sections 9.01 through 9.03, inclusive (the Loan Agreement, Financing

Agreement and instruments evidencing the 211 Debt and 511 Debt are hereinafter collectively referred to as "Debt Instruments"), provided for the creation of security interests in favor of USRA and the United States, respectively (the "Security Interests"), in the form of certain security instruments enumerated in said agreements (the "Security Instruments") which are listed on Exhibit C attached hereto; and

WHEREAS, Section 1164(c)(1) of the Northeast Rail Service Act of 1981, P.L. 97-35 ("NERSA"), as amended, provides in substance that, upon a determination that there is an agreement to purchase a profitable railroad in the Region, as defined in Section 102 of the 3R Act, which received a loan under Section 211(a) of the 3R Act, the Secretary shall limit the interest of the United States or any agency or instrumentality thereof in any debt of that railroad to an interest which attaches in the event of a bankruptcy or substantial sale or liquidation of the assets of the railroad and may substitute as evidence of that debt contingency notes payable solely from the railroad operating assets then securing such debt; and

WHEREAS, Section 1164(c)(2) of NERSA provides that the Secretary may subordinate the contingent interest of the



United States or any agency or instrumentality thereof to any new debt incurred by D&H subsequent to the purchase of D&H; and

WHEREAS, there is an agreement dated October 20, 1981 among D&H, Guilford, as the prospective purchaser, and Norfolk and Western Railway Company ("N&W") providing for the sale of D&H by Dereco, Inc., a subsidiary of N&W, to Guilford (the "D&H Sales Agreement"); and

WHEREAS, the Interstate Commerce Commission has approved, by decision dated July 23, 1982, the application of Guilford to control D&H (Guilford Transportation Industries, Inc.--Control--Delaware and Hudson Railway Company, 366 I.C.C. 396 (1982), affirmed in part and remanded in part, Central Vermont Railway, Inc. v. ICC, 711 F.2d 331 (D.C. Cir. 1983); and

WHEREAS, the parties to this Limitation Agreement wish to take appropriate action and provide for the delivery of appropriate documents in recognition of the provisions of Section 1164 of NERSA, as amended;

NOW, THEREFORE, in consideration of the premises stated herein and of the covenants and agreements hereinafter set forth, it is agreed as follows:

1. Representations and Warranties.

(a) Guilford and D&H represent and warrant that the D&H Sales Agreement presently constitutes, and will continue to constitute until Closing or Termination Date (as hereinafter defined), whichever shall first occur, an agreement between a profitable railroad in the Region (as defined in Section 102 of the 3R Act), which received a loan under Section 211(a) of the 3R Act, and a prospective purchaser of such railroad, within the meaning of Section 1164 of NERSA.

(b) Guilford represents and warrants that it is not acting for or on behalf of any other person or entity in connection with the D&H Sales Agreement and has no present intention to sell or otherwise dispose of the stock of D&H.

2. Determination of the Administrator. Pursuant to the authority granted by Section 1164 of NERSA, as amended, the Administrator hereby determines under Subsections 1164(b) and (c) that there is "an agreement between a profitable railroad in the Region (as defined in Section 102 of the Regional Rail Reorganization Act of 1973) which received a loan under Section 211(a) of such Act and a prospective purchaser for the sale of such railroad."

3. Substitution of Contingency Notes. In accordance with the authority granted by Section 1164(c) of NERSA, as

amended, the Administrator hereby amends the notes evidencing the 211 Debt and 511 Debt ("Notes") in the following respects:

(a) Except as provided in subsection (b) below, the principal of the Notes shall become due and payable, as provided in subsection (d) below, only when and if one of the following events occur (which are hereinafter referred to as "Events of Reinstatement"):

(i) a bankruptcy, receivership, reorganization or other insolvency proceeding (x) is commenced by D&H or (y) is commenced in respect of D&H by others and remains undismissed or unstayed for a period of sixty consecutive days;

(ii) the sale or other disposition of substantially all of the rail operating assets of D&H; or

(iii) liquidation of, or adoption of a plan of liquidation for, the assets of D&H;

provided that a merger of D&H with any other corporation shall not be construed as an Event of Reinstatement if the surviving corporation agrees to accept the Mortgaged Property (as hereinafter defined) subject to the terms of this Limitation

Agreement, the Amended Notes (as hereinafter defined), and any indenture then securing them; and provided further that a lease of all or any part of the rail operating assets of D&H for any term of years for any rental, including a nominal rental, to any affiliate of D&H shall not be deemed an Event of Reinstatement if any such lease will be inferior to the lien securing the Amended Notes.

(b) No principal and no interest heretofore or hereafter accruing on the Notes shall be payable during the period commencing on the date of this Limitation Agreement and ending on the Termination Date. In the event that the Closing of the D&H Sales Agreement ("Closing") is not consummated on or before the Termination Date, all payments of principal and interest which would have been due but for this Limitation Agreement shall become immediately due and payable on the Termination Date, and all other payments of principal and interest shall be due and payable as provided in the Notes as such Notes were in effect on the date of this Limitation Agreement without giving effect to this Limitation Agreement.

(c) If the Closing is consummated on or before the Termination Date, unpaid interest accrued on each Note as of the date of such Closing shall be added to, and become part of, the principal of such Note, and thereafter interest shall

cease to accrue until an Event of Reinstatement occurs, and principal shall be payable only upon the occurrence of an Event of Reinstatement, and upon such Event of Reinstatement interest shall begin to accrue from the date of such Event of Reinstatement and principal shall be payable in accordance with the Notes which were in effect on the date of this Limitation Agreement without giving effect to this Limitation Agreement.

(d) If the Closing is consummated on or before the Termination Date, from and after the Closing the Amended Notes shall be payable solely from the Mortgaged Property and shall not be payable from any other assets of D&H or of its successors. The holders of the Amended Notes shall have recourse only against the Mortgaged Property in enforcing payment of the Amended Notes by foreclosure or otherwise, and the holders of the Amended Notes shall not proceed against any other assets or be entitled to any deficiency judgment for any amounts of principal or interest remaining unpaid after completion of any foreclosure or other proceedings against the Mortgaged Property. Nothing in this Limitation Agreement shall, however, limit any rights or remedies the Administrator may have, whether specified herein or inherent in law or equity, against D&H or Guilford for actions which directly or indirectly adversely affect the Mortgaged Property.

(e) Upon the execution of this Limitation Agreement by the parties hereto, the Notes shall thereupon be amended as set forth in this Limitation Agreement without further action by D&H or the payees of the Notes and without any notation being made on the face of the Notes. If the Closing is consummated on or before the Termination Date, the Notes as amended and modified by this Limitation Agreement shall be deemed to be contingency notes as contemplated by Section 1164(c)(1) of NERSA, as amended, and a mutually acceptable form of non-negotiable notes, conforming with the provisions of this Limitation Agreement, may be substituted for the original Notes (which shall in such case be cancelled) to evidence the Notes in their amended form. The Notes as so amended or such substituted Notes are hereinafter referred to as the "Amended Notes".

4. Amendment of Debt and Security Instruments.

(a) All terms of the Debt Instruments other than those which require the payment of interest and principal shall remain in effect until the Closing. On the Closing, if consummated or or before the Termination Date, the Debt Instruments (excluding the Amended Notes) shall become null and void and of no further effect.

(b) The Security Instruments and the Security Interests created thereby shall remain in effect, provided that, effective at the Closing if consummated on or before the Termination Date, the Security Instruments shall be amended and consolidated into an amended and restated indenture of mortgage (the "Amended Indenture") containing the terms and conditions described in Section 5 hereof, and thereafter the Security Interests shall be subject to the terms and conditions of the Amended Indenture.

5. Amended Indenture. Promptly after the execution of this Limitation Agreement, the Administrator, Guilford and D&H shall begin discussions concerning the Amended Indenture, which shall contain such terms and conditions as the Administrator, D&H and Guilford shall agree, including without limitation the following:

(a) General. Except as otherwise contemplated by this Section 5, the terms and conditions presently contained in the First and General Mortgage dated May 1, 1963, from D&H to First National City Bank, as Trustee (the "1963 Indenture"), with modifications, additions and deletions which may be appropriate to reflect this Limitation Agreement and the contingent nature of the Amended Notes, shall be used as a model in the preparation of the Amended Indenture.

(b) Mortgaged Property. The railroad operating assets subject to the Security Interests created by the Security Instruments at the time of completion of the Closing, Deposited Cash (as defined in the 1963 Indenture but including (i) Deposited Cash held under the 1963 Indenture immediately prior to the Closing, (ii) securities (including securities acquired pursuant to Section 5(d) hereof) and interest on securities held by the Trustee, and (iii) interest earned on Deposited Cash) and capital or other assets acquired from time to time by use of funds disbursed from Deposited Cash, or obtained in exchange for Mortgaged Property, in accordance with the terms of the Amended Indenture shall be subject to the lien of the Amended Indenture. Except as provided in the immediately preceding sentence, no after acquired property shall be subject to the Amended Indenture. Such Deposited Cash, such present railroad operating assets and such additional capital or other assets, less any assets which may, from time to time, be released from such lien in accordance with the terms of the Amended Indenture, are collectively referred to herein as the "Mortgaged Property". Assets which are subject to the Security Interests created by the Security Instruments and which are not to become subject to the Amended Indenture, including without limitation the common stock of D&H, shall be released, effective at the Closing, from the Security Interests.



(c) Use of Deposited Cash. Funds deposited as Deposited Cash may be used to provide for, or reimburse D&H or its successors for, 100% of the costs (as may be capitalized in accordance with Accounting Principles) of acquiring or improving capital assets or 100% of the cost of eliminating deferred maintenance which has accrued prior to the Closing on assets, provided that such assets which are so acquired, improved or subject to deferred maintenance are, or become, Mortgaged Property subject to the lien of the Amended Indenture. "Improving" assets shall mean replacing or increasing the useful life of Mortgaged Property, to the extent that expenditures for such purposes are considered to be capital expenditures under Accounting Principles. Where the term "Accounting Principles" is used in this Agreement, reference may be made either to generally accepted accounting principles or to applicable railroad accounting rules as such principles or rules may be applied at the time at which the expenditure in question is made.

(d) Investment of Deposited Cash. In addition to investments of Deposited Cash permitted by the 1963 Indenture, Deposited Cash may be invested in unsecured notes issued by Guilford or its successors or guaranteed by Guilford or its successors maturing on demand or within 90 days of

issuance and bearing no less than the rate of interest then being paid on 90 day United States Treasury bills. In any such instance, Guilford (i) shall certify (x) that the Deposited Cash is being used in connection with freight transportation and (y) that there has been no adverse change in the financial condition of Guilford or its successors, as shown in its consolidated audited financial statements dated December 31, 1983 (taking into account the pro forma effect of the acquisition of D&H by Guilford if that occurs subsequent to December 31, 1983), such as would have a material effect on the ability of Guilford or its successors to repay the unsecured notes or to satisfy its guaranty and (ii) shall supply the most recent consolidated annual audited financial statements, which shall be certified without qualification by a nationally recognized firm of independent accountants, and the most recent quarterly consolidated year-to-date unaudited financial statements if the period covered thereby is after the period covered by such annual statements.

(e) Remedies. If the Administrator, or if the Trustee at the request of the Administrator, institutes a proceeding in a court of competent jurisdiction seeking specific performance for any alleged failure of Guilford or D&H to perform or to comply with the provisions of this Limitation

Agreement or the Amended Indenture, neither Guilford nor D&H will contest any action for specific performance, including any action for preliminary injunctive relief in connection with any such action for specific performance, on the ground that there exists an adequate remedy at law; provided, however, that by agreeing not to make such contention neither Guilford nor D&H waives or agrees not to assert any other defenses or positions in respect of any such action for specific performance. All remedies of the Administrator or of the Trustee, whether specified herein or inherent in law or equity, shall not be exclusive but shall be cumulative.

6. Subordination of Lien of Amended Indenture. If the Closing is consummated on or before the Termination Date, thereafter D&H or any of its successors which then own all or any part of the Mortgaged Property may incur Qualified Senior Debt (as hereinafter further defined), which is debt secured by all or any part of the Mortgaged Property, has a lien securing such Qualified Senior Debt senior and prior to the lien securing the Amended Notes, and for which the Trustee of the Amended Indenture has executed and delivered in recordable form appropriate instruments of subordination as shall be provided in the Amended Indenture in a manner conforming to the provisions set forth below.

(a) Qualified Senior Debt. Qualified Senior Debt shall be any indebtedness incurred by D&H or its successors for any of the following purposes:

(i) To provide working capital for use in the railroad operations conducted upon the Mortgaged Property at the time of the incurrence of such working capital indebtedness; provided that the aggregate amount of such working capital indebtedness permitted under this clause or any refinancing of working capital indebtedness permitted under clause (iii) of Subsection 6(a) shall not exceed \$18 million at any time outstanding. For purposes of this Agreement, any proceeds of Qualified Senior Debt not certified by the board of directors of D&H to be used under Subsection 6(a)(ii) including any refinancing thereof under Subsection 6(a)(iii) shall be deemed to be working capital expenditures under Subsection 6(a)(i).

(ii) To make expenditures (other than for working capital purposes) for the acquisition or improvement of capital assets

which will be used for freight transportation in the states of Maine, New Hampshire, Vermont, New York, Massachusetts, Connecticut, Pennsylvania, Maryland, New Jersey, Ohio, Virginia, West Virginia or the District of Columbia. As used herein, "improvement" of capital assets shall mean replacing or increasing the useful life of capital assets to the extent that expenditures for such purposes are considered to be capital expenditures under Accounting Principles as described in Subsection 5(c).

(iii) To refinance any indebtedness which was or could have been determined to be Qualified Senior Debt at the time it was incurred.

(b) Conditions. If the proceeds of any Qualified Senior Debt are used for the acquisition or improvement of a capital asset (as determined under Accounting Principles) or the refinancing of any Qualified Senior Debt, the granting or continuance (or both) of a Lien covering all or any part of the Mortgaged Property to secure such Qualified Senior Debt wherein such lien is senior to the lien securing the Amended Notes shall be subject to the satisfaction of the following conditions:

(i) Title to any such acquired or improved capital asset shall be held by the then owner of the Mortgaged Property or the then owner of the part of the Mortgaged Property covered by the lien securing such Qualified Senior Debt.

(ii) Any such Qualified Senior Debt shall be secured by a lien on such capital asset which (x) shall not be subordinated to, or pari passu with, any lien granted or incurred simultaneously with or after such acquisition or improvement and (y) shall not be released except when such capital asset is sold or otherwise disposed of and the net proceeds arising from such sale or other disposition are applied as a payment on the unpaid principal balance of the Qualified Senior Debt secured thereby.

(c) Subordination Instruments. When it is intended that any Qualified Senior Debt be incurred, D&H or its successors shall file a request with the Trustee of the Amended Indenture accompanied, inter alia, by a certified resolution of the board of directors of D&H or its successors determining that such indebtedness meets the requirements of Qualified

Senior Debt and specifying under which Subsection of Section 6(a) the proceeds of the Qualified Senior Debt will be used, and an opinion of counsel that such indebtedness meets the requirements of Qualified Senior Debt. The Trustee of the Amended Indenture shall thereupon deliver an appropriate instrument of subordination in recordable form subordinating the lien of the indenture securing the Amended Notes to the lien securing such Qualified Senior Debt.

7. Consummation of the Closing. The Closing, and all references thereto herein, shall be deemed to have occurred as of the date of such Closing only when Guilford shall have delivered to the Administrator its certificate to the following effect:

(a) The Closing has occurred in accordance with the terms of the D&H Sales Agreement; and

(b) The representations and warranties made herein are reaffirmed as of the Closing.

8. Termination. The "Termination Date" shall be June 30, 1984, or such later date as the Administrator shall hereafter specify in writing. In the event that the Closing is not consummated on or before the Termination Date, or upon the occurrence of an Event of Reinstatement or the termination of

the D&H Sales Agreement, if earlier, this Limitation Agreement and all of the rights and obligations of the parties hereunder shall cease and terminate, and all rights and remedies of the United States with respect to the Debt Instruments shall be as if this Limitation Agreement had never been made.

9. D&H Sales Agreement Condition. Guilford acknowledges that, upon arriving at a mutually acceptable form of Amended Indenture and Amended Notes to effectuate the intent of this Limitation Agreement, the condition stated in Section 8.07 of the D&H Sales Agreement will be deemed to have been satisfied.

10. Forgiveness of Notes. Unless required to do so by legislation enacted subsequent to the date of this Limitation Agreement, neither the Notes nor the Amended Notes will be forgiven or otherwise satisfied without payment in full unless prior thereto Guilford shall have given its consent in writing.

11. Payment of Dividends by D&H after Closing. If the Closing is consummated on or before the Termination Date, from and after the Closing and so long as no Event of Reinstatement has occurred, the Administrator, on behalf of the holders of the Amended Notes, and on behalf of the holders of



Redeemable Preference Shares of D&H (now or hereafter outstanding) referred to in Section 506 of the Railroad Revitalization and Regulatory Reform Act of 1976, acknowledges that D&H may pay dividends in respect of its common stock based upon surplus as computed in accordance with applicable law but that such computation shall be without regard to any liability represented by the Amended Notes as may otherwise prohibit payment of such dividends under Section 170 of the Corporation Law of the State of Delaware or any corresponding section of any law hereafter enacted by the State of Delaware. The Administrator, Guilford and D&H, as their interests appear, waive any right each may have against any of the others to use any liability represented by the Amended Notes, or, with respect to such liability, to rely on any provision of this Limitation Agreement or on Section 170 or any corresponding section of any law hereafter enacted by the State of Delaware, in any manner to prevent or avoid the payment of dividends on such common stock or Redeemable Preference Shares, as the case may be, in accordance with their terms. Nothing in this Section 11 shall be deemed to be a waiver by the Administrator of any rights conferred by this Limitation Agreement or by any other agreement which survives the Closing, any right to assert that the declaration and payment (or either of them) of any common stock dividend will result or has resulted in an Event

of Reinstatement or any right as a holder of equity securities of D&H to seek to enjoin payment of any common stock dividend as an alleged irreparable injury to D&H by reason of forced insolvency or otherwise, provided that, in the case that any such rights are exercised prior to the occurrence of an Event of Reinstatement, the liabilities represented by the Amended Notes shall be disregarded.

12. Counterparts. This Limitation Agreement may be executed in any number of counterparts. All such counterparts shall be deemed to be originals and shall constitute but one and the same agreement.

13. Survival. Except with respect to Subsection 5(a), the first two sentences of Subsection 5(b), Subsection 5(c), Subsection 5(d) and Section 6 above, which shall not survive the execution and delivery of the Amended Indenture (provided, however, that the first two sentences of Subsection 5(b) shall survive to the extent needed to give meaning to the third sentence of Subsection 5(b)), this Limitation Agreement shall survive the Closing.

14. Governing Law. This Limitation Agreement shall be construed in accordance with and governed by Federal law where applicable and otherwise by the laws of the District of Columbia.

IN WITNESS WHEREOF, the parties hereto have caused this Limitation Agreement to be duly executed on their behalf and witnessed or attested by their duly authorized officers, as of the day and year first hereinabove written.

WITNESS:

THE UNITED STATES OF AMERICA

By \_\_\_\_\_  
Federal Railroad Administrator

ATTEST:

DELAWARE AND HUDSON RAILWAY  
COMPANY

By \_\_\_\_\_

ATTEST:

GUILFORD TRANSPORTATION  
INDUSTRIES, INC.

By \_\_\_\_\_

EXHIBIT A  
"211 Debt"

Notes issued to the USRA under the Loan Agreement:

<u>Date of Issuance</u>	<u>Amount Issued</u>
March 15, 1976 as amended on December 20, 1976	\$13,960,480
January 25, 1977	2,500,000
August 8, 1977	2,000,000
December 29, 1977	2,000,000
December 29, 1977	2,000,000
February 10, 1978	7,539,520
January 7, 1980	2,000,000
July 22, 1980	2,000,000
December 29, 1980	2,000,000
February 3, 1981	500,000
May 1, 1981	750,000

EXHIBIT B  
"511 Debt"

Note issued under the Financing Agreement to the United States, represented by the Secretary of Transportation acting through the Administrator in substitution of notes dated February 9, 1978, August 25, 1981, and February 25, 1982 (as amended on September 23, 1982) and February 24, 1983:

<u>Date of Issuance</u>	<u>Amount Issued</u>
August 25, 1983	\$11,895,024.59

EXHIBIT C  
"Security Instruments"

Security instruments enumerated in the Loan Agreement:

Bond Pledge Agreement

Mortgage by D&H to USRA and FRA,  
dated March 15, 1976

Stock Pledge Agreement

Security instruments enumerated in the Financing Agreements:

Conditional Sale Agreement, dated March 12, 1976

Mortgage by D&H to USRA and FRA, dated March 15, 1976

EXHIBIT F

D-094102

D-094415

D-094729

D-094144

D-094801

D-140368

D-210090

D-210148

D-094578

D-000226

D-089516

## APPENDIX A

The parties to the attached contract further agree to be bound by the following, which are hereby made a part of said contract.

I. This contract may not be assigned by the contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the State.

II. This contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for the purpose thereof.

III. The contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended, that:

- (a) no laborer, workman or mechanic, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
- (b) the wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.
- (c) the minimum hourly rate of wages to be paid shall not be less than that stated in the specifications, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.
- (d) The Labor Law provides that the contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than --
  - (a) the stipulated wage scale as provided in Labor Law, Section 220, subdivision 3, as amended, or
  - (b) less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.

IV. The contractor specifically agrees, as required by the provisions of the Labor Law, Section 220-e as amended that --

- (a) In hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, sex, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
- (b) No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin.
- (c) There may be deducted from the amount payable to the contractor by the State under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract, and
- (d) this contract may be cancelled or terminated by the State or municipality and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract, and
- (e) the aforesaid provisions of this section covering every contract for or on behalf of the state or municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

V. During the performance of this contract, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.
- (b) If directed to do so by the Commissioner of Human Rights, the contractor will send to each labor union or representative of workers with which the contractor has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner of Human Rights, advising such labor union or representative of the contractor's agreement under clauses (a) through (g) (hereinafter called "non-discrimination clauses"). If the contractor was directed to do so by the contracting agency as part of the bid or negotiation of this contract, the contractor shall request such labor union or representative to furnish a written statement that such labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability or marital status, and that such labor union or representative will cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses and that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the contractor shall promptly notify the State Commissioner of Human Rights of such failure or refusal.



- (c) If directed to do so by the Commissioner of Human Rights, the Contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses (a) and (b) and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.
- (d) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability or marital status.
- (e) The contractor will comply with the provisions of Sections 290—299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to the contractor's books, records and accounts by the State Commissioner for the purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.
- (f) This contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the contractor has not complied with these non-discrimination clauses, and the contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until the contractor satisfies the State Commissioner of Human Rights that the contractor has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the contractor and an opportunity has been afforded the contractor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.
- (g) The contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the State Commissioner of Human Rights or the contracting agency may direct, including sanctions or remedies for non-compliance. If the contractor becomes involved in or is threatened with litigation with the subcontractor or vendor as a result of such direction by the State Commissioner of Human Rights or the contracting agency, the contractor shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

- VI. (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
- 1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
  - 2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;
  - 3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
- (b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determined that such disclosure was not made for the purpose of restricting competition.
- The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being b 1, does not constitute, without more, a disclosure within the meaning of paragraph VI (a).

VII. The agreement shall be void and of no force and effect unless the contractor shall provide coverage for the benefit of, and keep covered during the life of this agreement, such employees as are required to be covered by the provisions of the Worker's Compensation Law.